



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/886,234	06/21/2001	Erik S. Anderson	4010-001	5887

7590 11/19/2002

DENNIS H. RAINEAR
PATENT COUNSEL
13400 COLLEGE VALLEY LANE
RICHMOND, VA 23233

EXAMINER

ROWAN, KURT C

ART UNIT

PAPER NUMBER

3643

DATE MAILED: 11/19/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/886,234	Applicant(s) ANDERSON et al.
	Examiner KURT ROWAN	Art Unit 3643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on Oct 21, 2002

2a) This action is FINAL. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-25 is/are pending in the application.

4a) Of the above, claim(s) 2 and 8-25 is/are withdrawn from consideration.

5) Claim(s) 1 is/are allowed.

6) Claim(s) 3-7 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claims _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on _____ is: a) approved b) disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13) Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

*See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

a) The translation of the foreign language provisional application has been received.

15) Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) Notice of References Cited (PTO-892)

4) Interview Summary (PTO-413) Paper No(s). _____

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

5) Notice of Informal Patent Application (PTO-152)

3) Information Disclosure Statement(s) (PTO-1449) Paper No(s). 3

6) Other: _____

Art Unit: 3643

DETAILED ACTION

Election/Restriction

1. Claims 2, 8-25 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made without traverse in Paper No. 6.

Reissue Applications

2. The original patent, or a statement as to loss or inaccessibility of the original patent, must be received before this reissue application can be allowed. See 37 CFR 1.178.

3. Claims 3-7 are rejected under 35 U.S.C. 251 as being an improper recapture of broadened claimed subject matter surrendered in the application for the patent upon which the present reissue is based. See *Hester Industries, Inc. v. Stein, Inc.*, 142 F.3d 1472, 46 USPQ2d 1641 (Fed. Cir. 1998); *In re Clement*, 131 F.3d 1464, 45 USPQ2d 1161 (Fed. Cir. 1997); *Ball Corp. v. United States*, 729 F.2d 1429, 1436, 221 USPQ 289, 295 (Fed. Cir. 1984). A broadening aspect is present in the reissue which was not present in the application for patent. The record of the application for the patent shows that the broadening aspect (in the reissue) relates to subject matter that applicant previously surrendered during the prosecution of the application. Accordingly, the narrow scope of the claims in the patent was not an error within the meaning

Art Unit: 3643

of 35 U.S.C. 251, and the broader scope surrendered in the application for the patent cannot be recaptured by the filing of the present reissue application.

4. The limitations in claim 3 correspond to original claims 1, 9 of the parent application 08/770,592 now US 5,913,670 which recited the underwater gear, the breakaway link and the terminal load point of the link being greater than 100 pounds but less than 2500 pounds. The limitations of claims 4-6 are encompassed also by original claim 9 since all of the limitations in these claims are between the load points recited in claim 9 of the parent application. The limitations of claim 7 such as the breakaway link, the floating buoy and the load point were disclosed in original claims 1, 2, and 9 of the parent application.

Claim Rejections - 35 U.S.C. § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 3-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kahng. The patent to Kahng shows a fishing line connector 10 having a breakaway link 11 which is incorporated with underwater fishing gear 32, 34. In reference to claims 3-6, Kahng does not disclose the breaking load point, but it would have been obvious to a load point of between 50

Art Unit: 3643

pounds and 11, 300 pounds since routine experimentation would be used to determine the load points for the desired applications. See Kahng in column 2, lines 18-39. Kahng does not disclose whales or other cetaceans, but would provide a method of releasing fish. Hence, it would have been obvious to employ the breakaway link of Kahng to release whales or other cetaceans. Kahng shows the structure to perform the intended use.

7. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kahng as applied to claims 3-6 above, and further in view of Collins.

The patents to Kahng and Collins show fishing gear. Kahng has been discussed above and does not show a buoy. The patent to Collins shows a buoy 45, 51 connected to underwater fishing gear 57, 63. In reference to claim 7, it would have been obvious to provide Kahng with a buoy as shown by Collins for the purpose of locating the fishing gear a certain distance from the water surface.

- Allowable Subject Matter

9.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to KURT ROWAN whose telephone number is (703) 308-2321.

The examiner can normally be reached on Monday-Thursday from 6:30 a.m. to 5:00 p.m.

Art Unit: 3643

The fax phone number for the organization where this application or proceeding is assigned is (703) 306-4195 or (703) 305-3597.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.



KURT ROWAN

PRIMARY EXAMINER

ART UNIT 3643

November 18, 2002